

Procedures for Legal Separation and Annulment for Domestic Partners as of January 1, 2005 in response to AB 205

New Family Code section 299(d) provides that “the dissolution of a domestic partnership, nullity of a domestic partnership, and legal separation of partners in a domestic partnership shall follow the same procedures, and the partners shall possess the same rights, protections, and benefits, and be subject to the same responsibilities, obligations, and duties, as apply to the dissolution of marriage, nullity of marriage, and legal separation of spouses in a marriage...”

Who are domestic partners?

Domestic partners are “two adults who have chosen to share one another’s lives in an intimate and committed relationship of mutual caring.” Fam.Code § 297(a). A domestic partnership is established in California when both persons file a notarized Declaration of Domestic Partnership with the Secretary of State and they: (1) have a common residence; (2) are not married or related by blood in a way that would prevent them from marrying; (3) are at least 18; and (4) either are members of the same sex or one or both of them is over 62 and eligible for Social Security benefits. Fam. Code § 297(b).

What is the new California Rule of Court?

New rule 5.28 is proposed to indicate that, other than the initial petition and response, the same forms are to be used for dissolutions, legal separations, and annulments of domestic partnerships as are used for dissolutions, legal separations, and annulments of marriages (with the exception of summary dissolutions, which are discussed below). In addition, pending the revision of all family law forms and rules, rule 5.28(b) would make it clear that in any family law rules or forms the terms “spouse,” “husband,” “wife,” “father,” “mother,” “marriage,” and “marital status” include “domestic partner,” “parent” or “domestic partnership” as applicable.

What are the new forms?

The only new family law court forms proposed to implement AB 205 are: *Petition–Domestic Partnership (Family Law)* (form FL-103) and *Response–Domestic Partnership (Family Law)* (form FL-123). For all other forms to complete their divorce, legal separation or annulment, domestic partners will just use the same forms as those used by married persons.

Do divorcing domestic partners have to exchange Declarations of Disclosure?

Yes, AB 205 says that the domestic partners should have “the full range of legal rights, protections and benefits, as well as all of the responsibilities, obligations, and duties to the other, to their children, to third parties and to the state” as married persons.” Thus, all procedural protections, such as the requirement in Family Code section 2100 et seq. to disclose all assets, debts, income, expenses and business opportunities to the other spouse are therefore applied to domestic partners.

What is the filing fee?

Since domestic partners have the same rights and responsibilities as married persons, and the procedure for processing their divorces, legal separations and annulments is the same, the filing fee should be the same.

What are the changes to the existing forms?

Family law forms have been reviewed to make sure that they are gender –neutral and can be used for domestic partners. Most family law forms do not need to be revised, since they use the gender-neutral terms “petitioner” and “respondent” rather than “husband” and “wife” or “mother” and “father.” Those that are not gender neutral are being modified accordingly. All forms that refer to “spousal support” will be modified to refer to “partner or spousal support.”

What are the differences between divorces of married persons and domestic partners?

- Residency – Domestic partners who have registered in California have agreed to the jurisdiction of the California courts to end their domestic partnership – even if they move away. If they have become domestic partners (or their equivalent) in other states, they can file in California, but must meet the same residency requirement as married persons.
- Partner support – unlike spousal support generally, for purposes of federal taxes, partner support probably will be taxable to the recipient and not deductible for the payor.

What about summary dissolutions?

Family Code section 299(a) sets out a procedure for an administrative termination of a domestic partnership with the Secretary of State if the parties meet the requirements of that section. Forms may be obtained from the Secretary of State’s office and filed with that office. Those statutory requirements parallel the restrictions on summary dissolution of a marriage as set out in Family Code section 2400. Since the forms for court-ordered summary dissolution (FL-800

through FL-830) will not be used in cases involving domestic partners, they have not been revised.

Are all family law forms gender-neutral now?

Although all forms used in dissolution, legal separation, and annulment have been reviewed, the forms for governmental child support and simplified support modification are not proposed for change at this time because they are slated for more significant revisions as part of the plain-language project. Any changes necessary to make those forms gender-neutral will be proposed at that time.

Why not have a separate set of forms for domestic partners?

A separate set of forms for domestic partnerships was considered but rejected because it required creating many new forms and made updating problematic. And the intent of the law is for domestic partnerships to follow the same procedures as for married couples, so the same forms would be used. Finally, the changes to the existing forms are minor and do not seem to add as much complexity as a separate set of forms would.

How can I analyze questions that come up about the divorce process for domestic partners?

Remember, the law's intent of this law is for domestic partners to be treated the same as married persons. In analyzing situations involving domestic partners that may come before you, you only have to think about how you would proceed with a divorce, legal separation or annulment between married persons and follow that procedure.

Does this affect me if I don't work in family law?

Yes, everyone in the code or rules that you see "spouse" you need to recognize that it includes a domestic partner. For example, inheritance rights under the Probate Code are extended to domestic partners. Likewise, evidentiary privileges applicable to spouses will apply equally to domestic partners. One notable exception is the Revenue and Taxation Code under which domestic partners may not file joint returns, although spouses can.

What about federal laws?

At this point, federal law does not recognize domestic partners. Thus, any analysis that involves tax implications, such as spousal support will need special consideration. There are over one thousand federal laws in which marital status is

a factor. These include rights under Social Security, Medicare, immigration law, veterans' benefits and federal tax laws. Domestic partners also may not have the same rights as married persons once they cross beyond California's borders. This may be particularly significant in the context of child custody issues.